No. 48458-7-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

TED SPICE,

Appellant,

vs.

ESTATE OF DORIS MATHEWS,

Respondents

APPELLANT'S REPLY BRIEF

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I. SUMMARY OF REPLY ARGUMENT

The Estate of Doris Mathews ("the Estate")'s response does an excellent job at addressing arguments that are not before the Court. It does so by attempting to include any number of facts and claims that have no lasting relevance. The Estate paints a picture of an apple being bitten twice, but that is not the case. Spice is seeking relief for actions the Estate committed, through its personal representative, for matters that occurred after other litigation had commenced or began.

The Estate's continued attempts to argue this appeal untimely are unpersuasive. Binding precedent, brought to the attention of the Estate, has already addressed the Estate's principal argument.

II. ARGUMENT

A. The Estate's argument for untimeliness of this appeal has already been denied twice by this Court

The Estate has previously motioned this Court to dismiss this appeal for the same reasons it continues to do so in its response. A commissioner denied the motion and the Court denied the motion to modify. The request to dismiss this appeal as untimely should again be denied. The Estate's argument is that Spice's motion for reconsideration was filed within 10 days, but because supporting documents (which it also argues are not permissible under CR 59) came minutes after the closing

the clerk's office those documents were deemed filed on the 11th day and, somehow, the motion is therefore not filed within 10 days.

The Estate admits it received all the supporting documents (a note for motion docket and the Declaration of Ted Spice) on November 9th, 2016 (the 10th day). Estate Resp. at 7. It isn't disputed that the documents were actually filed on November 9th, 2016, but that because the supporting documents were filed after the 4:30pm deadline that the note for motion docket and Declaration of Ted Spice in Support of Reconsideration were deemed by the Clerk's office to be filed on November 10th. Counsel for Spice submitted a declaration explaining that the trial court's electronic filing system was creating some issues that caused a bit of a delay.[1] CP 558. The Estate even submitted the e-mail it received for the documents that stated "this e-mail will come in multiple parts as it exceeds the amount allowed for attachments" and shows the three e-mails that took 17 minutes to send. CP 647. It is also worth observing that the note for judge's motion calendar itself indicates it was signed electronically on November 9, 2015 as well. CP 643.

Legally, the issue before the court is whether a motion for reconsideration is untimely for purposes of notice of appeal deadlines when documents other than the motion for reconsideration were filed

[1] The Declaration of Ted Spice contained almost 50 pages of colored pictures. CP 510-57.

several minutes after a local court's electronic deadline. That issue has already been decided in Buckner, Inc. v. Berkey Irr. Supply, 951 P.2d 338, 89 Wn.App. 906 (1998), review denied, 136 Wash.2d 1020, 969 P.2d 1063 (1998) and as controlling precedent the Estate's request should be denied.

The Buckner court answered "the narrow question of whether failing to note a CR 59 motion at the time that it is timely served and filed makes the motion itself untimely and thus ineffective to extend the time under RAP 5.2(e) to file a notice of appeal." Id. at 912. The Buckner court "h[e]ld that a timely served and filed motion for reconsideration satisfies the requirements of RAP 5.2(e) and extends the time limit for filing the notice of appeal. The failure to note the motion at the time it is served and filed does not affect the extension of time for appeal under RAP 5.2(e)." Id. at 916. The Estate's Motion, however, continues to ignore Buckner.

In Buckner, the appellant had timely filed its motion for reconsideration of the judgment, but, like here, did not note the motion for hearing. 89 Wn. App. at 910. There, as here, the respondent at the trial level complained of the untimely note for judge's calendar. Id. at 912. There, as here, the trial court considered and denied the motion for reconsideration. Id. The Buckner court recognized that court rules "contain a preference for deciding cases on their merits rather than on procedural

technicalities." Id. at 914. (internal citations omitted). The Buckner Court referenced three reasons why noting a motion for reconsideration has no effect on the 30-day time limit concluding it would be a "true triumph of form over substance" to deem an appeal untimely because the motion for reconsideration is not noted at the same time the motion for reconsideration is filed. Id. at 915.

RAP 18.8 provides that this Court may "waive or alter the provisions of any of" the rules of appellate procedure including enlarging, "in extraordinary circumstances and to prevent a gross miscarriage of justice" extend the time upon which a party must file a notice of appeal. RAP 18.8 (a), (b). RAP 18.8(b) references that the "desirability of finality of decisions outweighs the privilege of a litigant to obtain an extension of time under this section."

Here, there is no dispute that the question is merely whether filing of a note for judge's calendar and an unnecessary declaration filed within mere minutes of an electronic filing system should deprive Spice of the opportunity to seek review.

Even if the Estate's argument relating to an 11th day filing, caused by obvious technical issues, of supporting documents had merit and the Court is prepared to overturn Buckner, the portion of the appeal relating to attorney fees was filed well within the timeline. Furthermore, it isn't

apparent that the order on summary judgment was a final judgment under CR 54(b) insomuch as it expressly provided that either party can request "damages or other relief based on a prior ruling of this Court . . . within 60 days" CP 788-89.[2]

B. Burnet v. Spokane Ambulance does apply to motions for reconsideration.

In Burnet v. Spokane Ambulance, 131 Wash. 2d 484, 933 P.2d 1036 (1997) the Washington Supreme Court recognized that excluding relevant testimony is among the most severe sanctions, and that it is an abuse of discretion to do so without considering, on the record, three factors. 131 Wn.2d at 497. The "Burnet factors" as described in Keck v. Collins, 184 Wash. 2d 358, 368, 357 P.3d 1080 (2015) are: "whether a lesser sanction would probably suffice, whether the violation was willful or deliberate, and whether the violation substantially prejudiced the opposing party" Id. at 369. Failure to engage in the inquiry is an abuse of discretion. Id. at 368.

The Estate argues that the *Burnet* factors simply do not apply to a motion for reconsideration. No published case has directly addressed the issue. The Estate relies of Fishburn v. Pierce County Planning and Land

[2] Spice recognizes that under CR 54(b) a decision is final decision subject to appeal when only an award of attorney fees remains, however, here there were several other orders that both parties sought relief from that would seem to be different than the attorney fees envisioned in CR 54.

Serv's Dept., 161 Wash. App. 452 (2011), rev. denied 172 Wash.2d 1012 (2011).[3] See Estate Resp. at 10. Fishburn, however, at no point addresses the *Burnet* factors. Indeed, it isn't even apparent from the decision whether the late-filed declaration in Fishburn was admitted or whether the trial court engaged in the *Burnet* factor analysis.

The Estate also relies on Chen v. State, 86 Wash. App. 183, 937 P.2d 612 (April 18, 1997)[4]and Ghaffari v. Department of Licensing, 62 Wash. App. 870 (1991)[5] for the proposition that "taking additional evidence . . . [is] within the discretion of the trial court." 86 Wash. App. at 191-92. The parties agree that evidence exclusion or not is within the *reasonable* discretion of the trial court. However, in Washington State it is abuse of that discretion to exclude proffered evidence without considering the *Burnet* factors on the record. Further, in "the context of summary judgment . . . there is no prejudice if the court considers additional facts on reconsideration." 86 Wash. App. at 192.

C. Res judicata does not apply

[3] The Fishburn court is cited to for the proposition that available evidence must be presented before the "opportunity passe[s]" or there is no "entitle[ment] to present it. Estate Resp. at 10 relying on Fishburn and Wagner Dev., Inc. v. Fid. & Deposit Co., 95 Wash.App. 896, 906, 977 P.2d 639 (1999). The Wagner court also did not address the *Burnet* factors and it is not possible to determine whether or not the trial court in that case considered the factors or not.

[4] Burnet, was decided on April 3, 1997. See Burnet v. Spokane Ambulance, 131 Wn.2d 484, 484, 933 P.2d 1036 (1997)

[5] Obviously, this decision pre-dates Burnet.

The Estate is attempting to argue that the claims of Plexus Investment LLC ("Plexus) against the estate for misappropriation and mismanagement of Plexus assets (creating entity debt for personal use) are the same claims raised in a prior litigation and are, therefore, barred by the doctrine of res judicata. Estate Resp. 13-14. The Estate exhibits[6] an unpublished opinion of this Court (Spice v. Dubois, No. 44101-2-II (filed March 1, 2016), which was not part of the trial court record and that exhibit should be struck.

Generally, "[f]ailure to raise an issue Before the trial court . . . precludes a party from raising it on appeal." Smith v. Shannon, 100 Wn.2d 26, 37, 666 P.2d 351 (1983). Usually a reviewing court will refuse to consider such issues. 100 Wash. 2d. at 38.

Below, the argument from the Estate was that the claims from Plexus were either time barred, that there was no duty to of the Estate to contribute, or that Spice cannot seek those claims in his own name. See CP 114-15. The Estate argued res judicata applies to "[a]ll *claims by Mr. Spice*." CP 118 (emphasis added). It did not argue, therefore, that claims by Plexus would be barred as Plexus has not been made a party.

The Estate certainly did not argue that "Plexus Investment LLC is not a proper party" as it does here. Estate Resp. 16. In fact is specifically

[6] The Estate did not cite to the unpublished opinion for any legal argument.

argued that Mr. Spice could not bring the claims of Plexus in his name and should have done so in Plexus's name. CP 114. The entire argument of the Estate's response at C-3-b is predicated on a decision that had not been made when the trial court considered this motion.

Although the Estate claims that the claims of Plexus were part of the previous litigation between the parties it fails to note that Plexus was not a party.[7] See CP 151-167. Furthermore, it fails to recognize that the intended claims of Plexus are for matters that have occurred after prior litigation including for funding matters that would substantially improve Estate assets (specifically, for attempting to obtain water services to permit development of co-owned properties). See CP 283-84. That Spice alleged that Ms. Doris Matthews misappropriated funds belonging to him is fundamentally different from Plexus alleging that Ms. Matthews or the Estate (through its representative) took funds belonging to it or owes it funds as contribution.

Spice, however, below recognized and continues to assert that "a member of an LLC cannot bring an action in his name for the benefit of the LLC." CP 278. On appeal Spice specifically seeks a reversal of the

[7] Res judicata "requires identity between a prior judgment and a subsequent action as to (1) persons and parties, (2) causes of action, (3) subject matter, and (4) quality of persons for or against whom the claim is made." Pederson v. Potter, 103 Wash. App. 62, 69, 11 P.3d 833 (2000).

trial court's order denying his motion for continuance[8] to allow him to amend his complaint to actually add Plexus. Spice Br. 24. Plexus was inadvertently dismissed when Spice amended his complaint to bring in several causes of action together under a single complaint. CP 284-85. The Estate was aware of those circumstances. See CP 290 (an e-mail exchange between the Estate's counsel and the attorney that drafted the amended complaint (CP 28-35)).

The trial court should not have ruled on claims of a non-party[9], and that decision should be reversed. This could should not do so either

D. Plexus Investment LLC claims would not be untimely

It is understood that the Court may be concerned about mootness if the claims of Plexus are untimely. Plexus, based upon the complaint it filed that was dismissed inadvertently, alleged that the Estate failed since, and continuing, December 2009 to pay any "fees, legal fees, debts and expenses" and that the Personal Representative "failed to remove Doris Mathews interest from Plexus, or any other operating cost" and that the "Defendants" (plural – referencing the Estate and Donna DuBois as personal representative) misappropriated funds and that "Defendants"

[8] The Estate did not actually object to the request for a continuance or present argument against the request. See CP 327-332.

[9] The Estate indicates that Plexus Investments LLC "is not a proper party." Estate Resp. at 16. There is no ruling that Plexus Investment LLC was actually a party to the summary judgment proceeding.

(plural). See CP 985-86. Whether Spice vacates the order of dismissal of the inadvertently dismissed Plexus claims or amends the amended complaint to add Plexus (permitting a CR 15(c) relation back of the amendment) bring the filing date back substantially: June 5, 2013 (complaint under cause no. 13-2-09887-9) or May 20, 2014 (Mr. Spice's pro se complaint that was inadvertently dismissed[10]). See CP 16, 985.

E. Estate Committed Waste and mismanagement on Co Owner Properties

The Estate does not seem to contest that an estate *could be* liable to a co-tenant for waste or mismanagement. The Estate does not present any legal argument that would prohibit Spice from seeking such relief. See Estate Resp. 18-24. It becomes a factual question: Whether the evidence presented by Spice and the Estate, taken in a light most favorable to Spice, demonstrated that there was no genuine issue of material fact concerning whether the Estate misappropriated funds, mismanaged the co-owned properties, or committed waste on the co-owned properties and are entitled to a judgment as a matter of law dismissing. Considering the summary judgment standard, Spice has presented more than sufficient evidence to defeat the Estate's motion for summary judgment.

[10] Strictly speaking, the dismissal was intentionally done, but omitting Plexus from the amended complaint was the mistake. See CP 284-85.

The Estate makes contradictory remarks regarding the factual support for the claims presented by Mr. Spice. The Estate claims that Mr. Spice did not offer a declaration of Ms. Wood in response to the summary judgment to support any report. However, the Estate also concedes the point in its response to this Court as well. The Estate argued in its response "the trial court did allow a late declaration submission of a declaration by Mr. Spice (CP 333-334), and a declaration of Norma Woods (CP 336-337) before oral argument. Estate Resp. 9-10. The Norma Woods declaration specifically states "I prepared the report … that I understood he has submitted." CP 336. This was filed on October 15, 2016. CP 336. This declaration, filed the day before the summary judgment now on appeal, and was allowed to be presented by the trial court without objection from the Estate. Spice's attorney referenced Norma Woods declaration stating "I was unable to present a declaration to the Court in a timely fashion regarding that" which was referencing Norma Woods declaration that also concerned evidence of an oral contract and the trial court's concerns over the "Dead Man's Statute." October 16, 2015 RP 15:5-18. Spice's counsel stated that "I could present one in an untimely fashion" Id. At 15:17-18. The trial court then stated, "present away." Id. at 15:19. Thereafter, Ms. Woods declaration (at CP 336) was

discussed. Ms. Woods submitted another declaration on November 25, 2015 indicating that she prepared the accounting. CP 622.

In any event, there was no finding by the trial court that the accounting providing by Norma Woods was, in fact, not prepared by Ms. Woods. Furthermore, it wouldn't matter because on summary judgment all facts should be construed in a light most favorable to the non-moving party. Clements v. Travelers Indem. Co., 121 Wn.2d 243, 249, 850 P.2d 1298 (1993). If Spice prepared the report, which he did not, the conclusions from the report would still be the controlling facts.

The accounting report is a determination from a third party that is based upon her review of "literally thousands of pages of records" such as an accounting report provided by the Estate, bank records of the Estate, bankruptcy records, property manager statements, utility bills, checks, receipts, attorney fee records, an accounting of 14 bank accounts, and property expense records. CP 622-24. The thoroughness of her accounting is further demonstrated by the almost $90,000 cost for it. CP 624. After the trial court disregarded the substantial effort that went into presenting a summary, Spice took pains to bring forward some of the evidence Ms. Woods relied on. See generally CP 510-618 and 622-35

The testimony of Ms. Woods is that she found numerous instances of misappropriation and mismanagement including rental proceeds ("the

Estate has failed to pay to Spice $49,000 in rental income"), using rental proceeds to pay for the family expenses of the personal representative ("$1,992.98 on utilities ... while utilizing rental income from co owned properties" for, in part, Ms. Donna DuBois's sister), "$10,893.40 for property taxes and repairs," and "$958,000 in operating capital" that the decedent "appropriated." CP 623, 624.

The Estate repeatedly suggests that Spice has the burden of proof to establish not just competent testimony demonstrating waste, mismanagement, and misappropriation, but also that it must do so in some sort of overly convincing manner. See Estate Resp. at 18 (Spice failed to submit exhibits or facts to support his claim... provides no evidence of damage, lost rent, improper rentals, or missing monies.", Id. at 21 (complaining that Spice only "offers his own unsupported declaration . . . to back his claims."), id. at 22 ("neither the report, or Mr. Spice, offer any documents . . . to support its calculations of alleged monies due."), id. at 22 ("no loan or other document is included.", id. at 22 ("[m]any of the exhibits Mr. Spice offers appear to have been created by him.").

The burden is, of course, on the moving party. CR 56(c). The Estate, below, put forward a two page declaration of Mrs. Donna DuBois. CP 253-269. It addressed an alleged timeline for who was managing the properties at what time, her observation of the properties on April 3,

2014[11] (apparently the first time since November 2012), and that some co-owned property in Kitsap has a limited value to her. CP 253-254.[12] It merely claimed that she "found the properties to be substantially the same condition as when Mr. Spice stopped collecting rent ... in approximately November 2012." CP 254. Thus, by her own claims she has no idea what happened to the properties between November 2012 and April 2014 and whether they were damaged and repaired (as Spice alleged[13]) is unknown to her. Yet she sent a letter to "Dear Tenant" dated November 8, 2012 indicating that she will be in charge and that she will be a "visible presence" "around the place." CP 361. Nevertheless, she ignored these co-owned properties despite being the owner placed in charge and after SJC management turned the properties back over to her in August 2013. See discussion Spice Opening Br. at 34.

The Estate claims that based upon Spice's logic "the Estate could sue him [Spice] for waste, mismanagement, lack of tenants, non-payment of utilities, mortgage, etc. since he didn't take action on the same concerns

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[11] As discussed in Spice's opening brief at 34 the evidence demonstrated was that SJC turned management back over to the Estate shortly after an eviction that concluded on August 20, 2013. This would mean the Estate ignored the properties for over seven months.

[12] The declaration also details that she lacked an awareness of a wage claim by Mr. Payne, but that issue is not under appeal. CP 254.

[13] Some of the costs showing repairs were attached as receipts to vendors for repairs done by Spice in the motion for reconsideration. CP 426-62. These receipts are of importance in demonstrating the repairs completed by Spice, and thus the apparent necessity of the repairs, and also for any future claim by Spice for an entitlement to him for improving the value of the co-owned properties, a claim that the trial court foreclosed.

he claims." Estate Resp. 21. Spice would agree with this proposition, if he was the party placed in control of the co-owned properties and acted as the Estate did. Unfortunately, as the party deemed to have no authority Spice was compelled to watch as the properties were driven further into debt and disrepair. The Estate's actions creating mortgage penalties on 11003 58th St. Ct. E. is over $30,000. See CP 294, 301-303 (Ms. Woods accounting showing increased mortgage payments and penalties).

F. Spice's Reconsideration Motion was Improperly Denied Particularly Respecting Property Taxes and Improvements

The Estate argues that it "can decide for itself whether or not to pay" property taxes. Estate Resp. 25. The somewhat peculiar statement is made in support of its legal allegation that "there is no independent cause of action to require the Estate to reimburse Mr. Spice for any taxes he may have paid." Id. at 25-26. The personal representative of the Estate took a similar dismissive approach to mortgages and taxes for the co-owned properties in May, 2015 during a bankruptcy court proceeding leading the bankruptcy court to state "You're sitting on money and not paying the taxes and you want to sell the properties... I find it unfathomable." CP 420. The Estate, for the first time, also argues that Spice "may have a

remedy under RCW 84.64.060" for a lien against the property for any taxes paid.[14]

Spice below relied on, in reconsideration[15], Cook v. Vennigerholz, 44 Wash. 2d. 612, 616 (1954) for the traditional rule that "when an encumbrance upon a cotenancy is paid off by one of the cotenants, he is immediately subrogated to the rights of the encumbrancer, in so far as the amount chargeable to the other cotenant is concerned."

Here, the trial court dismissed all claims relating to taxes in a manner that seems to prevent any relief under the traditional rule or for rights under RCW 84.64.060. The trial court dismissed "all claims" and on reconsideration Spice wanted to, at least, clarify that the traditional right of a senior encumbrance for taxes paid by a co-tenant remains possible if and when the properties are sold.

The taxes Mr. Spice paid, and his corresponding enhanced interest in the co-owned properties, is related to his labor and financial contributions toward the co-owned properties is related to the other issue on reconsideration -whether Spice is forever forestalled from seeking the

[14] RCW 84.64.060 effectively allows a person with an interest in real property to pay the amount levied against the property for taxes and to get a lien for the amount paid.
[15] CP 351.

common law relief at partition.[16] Generally, the "rule [is] that while a cotenant cannot at his own suit recover for improvements placed upon the common estate without the request or consent of his cotenant . . . a court of equity, in a partition suit, will give the cotenant the fruits of his industry and expenditures, by allowing him the parcel so enhanced in value or so much thereof as represents his share of the whole tract." Cummings v. Anderson, 94 Wash. 2d 135, 141, 614 P.2d 1283 (1980). The rule "reflect[s] an understanding that a cotenant should not be permitted to take inequitable advantage of another's investment." Id. at 142.

G. RCW 11.48.020 Imposes a Duty on the Personal Representative

RCW 11.48.020 provides that "*[e]very* personal representative *shall* . . . have a right to the immediate possession of all the real as well as personal estate of the deceased . . . and *shall* keep in tenantable repair all houses . . . which are under his or her control." (emphasis added). The Estate, without supporting case law, states that the "statute applies only to the interest of the Estate and its beneficiaries." Estate Resp. 20. Under the Estate's reasoning in those situations where a personal representative is

[16] Spice argued below that the time to compute his increased equitable interest was during the probate, or, alternatively, that the trial court should not forever bar him from seeking such relief.

also the sole heir it would seem there is no duty at all to keep a property under tenantable repair.

No case has apparently squarely addressed the issue. However, a plain reading of the statute at least compels a duty on the personal representative for how he or she must treat property under his or her control. A personal representative can possess, but not destroy or waste real or personal property of the Estate.

H. A Continuance below was warranted

Without repeating argument already presented with the respect to the trial court improperly denying Spice's motion for a continuance it is appropriate to address the Estate's allegation of delay from "over two years" which it refers to as a "significant period of time." See Estate Resp. at 24-25.

This was not a case that sat idle from filing. A chart was prepared demonstrating the various motions and orders that was involved. See CP 680-81. Additionally, the personal representative filed for bankruptcy, and numerous matters from the bankruptcy filing interfered or involved the instant case. See CP 829-30, CP 831-832, CP 833-35, CP 97-100. The Estate even requested $76,347.57 in attorney fees. CP 653. Although Spice maintains that figure to be extremely excessive, it stands as evidence

to the activity in the case. Numerous motions were brought by Spice that were successful or brought by the Estate in which Spice successfully defended.

I. The award of attorney fees below should be reversed

Spice maintains that he should have been awarded attorney fees below. See Spice Op. Br. at 46. The trial court awarded Spice attorney fees below, apparently, and characterized those fees as an "offset." See Jan. 8, 2016 RP 14:7-14 ("Mr. Spice did prevail in part, so that's, I think, *kind of an offset* . . . Again Mr. Spice prevailed in some matters and there should be an offset."). The fundamental problem with the trial court's ruling in this regard, with all due respect, is that it provides no rationale for its monetary calculation. The trial court recognized it did not "know what the magic number in this case is," Id. at 14:10-12, but it should be required to parse out what attorney fees are awarded and why. Otherwise adequate review is impossible.

J. Spice is entitled attorney fees on appeal

RCW 11.96A.150 allows any court the discretion to award reasonable attorney fees to a party considering "any and all factors." Spice's action seeks to obtain relief for damage incurred to co-owned properties as both physical waste, for mismanagement causing loss of income to both Spice

and, really, the Estate. Spice has also had to incur attorney fees defending against the Estate's argument that a declaration in support of a motion for reconsideration that ended up being filed several minutes after 4:30 PM on the day of a deadline at the trial level and now three times on appeal despite controlling precedent expressly rejecting the Estate's argument. See Buckner, Inc. v. Berkey Irr. Supply, 951 P.2d 338, 89 Wn.App. 906 (1998), review denied, 136 Wash.2d 1020, 969 P.2d 1063 (1998).

III. CONCLUSION

This appeal is timely. This Court and binding precedent both recognize that the hyper-technical reading suggested by the Estate does not serve substantial justice to any party.

The Estate has not demonstrated that there are no genuine issues of material fact entitling it to a judgment as a matter of law dismissing Spice's claims. The accounting provided by Ms. Norma Woods found misappropriation and waste by the Estate. The record, viewed in a light most favorable to Spice, shows that the Estate mismanaged co-owned properties and allowed them to fall into disrepair and ruin. The Estate undermined mortgage refinancing and incurred substantial penalties to senior lenders in the process.

The trial court should have allowed a continuance to assert the relief sought by Plexus and to allow discovery to be completed. Spice

gave sufficient evidence to demonstrate that additional relevant evidence was being sought, and that more was intended to be done in the future.

DATED this December 19, 2016

Jonathan Baner, WSBA #43612
Attorney for Appellant

CERTIFICATE OF SERVICE

I, Stanley, Keegan, a person over 18 years of age, declare that I delivered an original and copy to the Court of Appeals and mailed a true and correct copy to Patrick Hanis. I declare under penalty of perjury under the laws of the State of Washington that the forgoing is a true and correct statement. Signed at Tacoma, WA on December 19, 2016.

Keegan Stanley